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10  
11 **UNITED STATES DISTRICT COURT**  
12 **DISTRICT OF NEVADA**

13 KENTRELL D. WELCH,

Case No. 2:19-cv-01243-APG-NJK

14 Plaintiff,

**ORDER TO**  
**EXTEND TIME TO RESPOND TO**  
**PLAINTIFF'S MOTION FOR**  
**MEANINGFUL ACCESS TO MR.**  
**WELCH [ECF NO. 107]**  
**(FIRST REQUEST TO EXTEND TIME**  
**TO RESPOND TO ECF NO. 107)**

15 v.

16 LIGGETT, *et al.*,

17 Defendants.

18  
19 Pursuant to Local Rule IA 6-1 and 26-3, Defendants, Jordan Gunderson, Gavin  
20 Liggett, Keith McKeechan and James Wuest (“Defendants”), by and through counsel,  
21 Aaron D. Ford, Attorney General of the State of Nevada, and Randall Gilmer, Chief Deputy  
22 Attorney General, on behalf of attorney of record, Deputy Attorney General Alexander  
23 Smith, and Plaintiff, Kentrell D. Welch (“Plaintiff”), by and through his counsel, Rene L.  
24 Valladares, Federal Public Defender, Randolph M. Fiedler, Assistant Federal Public  
25 Defender and Stacy Newman, Assistant Federal Public Defender, hereby respectfully  
26 submit the following Stipulation and Order to Extend Time for Defendants to file their  
27 response on **Friday, February 11, 2022**, to Plaintiff’s Motion for Meaningful Access to  
28

1 Mr. Welch [ECF No. 107] (“Motion”) which was filed on January 21, 2022. This is the first  
2 request for an extension to respond to this Motion.

3 **I. INTRODUCTION**

4 Due to unforeseen circumstances, the Parties request a one-week extension for  
5 Defendants to respond to Plaintiff’s Motion. This extension will move Defendants’ response  
6 deadline from Friday, February 4, 2022, to **Friday, February 11, 2022**. The Parties  
7 request is based on good cause and is not made in bad faith. Additionally, there will not be  
8 any prejudice to Plaintiff because Plaintiff joins this request for a one-week extension.

9 Instead, if this request is not granted, Defendants will be unable to explain their  
10 position as to the significant safety and security concerns presented by Plaintiff’s Motion.  
11 The Parties, therefore, agree that Defendants should be allowed additional time to respond  
12 to Plaintiff’s Motion in order for this Court to properly consider all parties presented by the  
13 Plaintiff’s Motion.

14 **II. RELEVANT BACKGROUND**

15 On January 21, 2022, Plaintiff filed his Motion for Meaningful Access to Mr. Welch.  
16 ECF No. 107. Counsel, Alexander J. Smith for Defendants, unfortunately, was forced to  
17 take Family Medical Leave (FMLA). As a result, the Office of Attorney General is in the  
18 process of assigning replacement counsel to each of DAG Smith’s cases until such time as  
19 either DAG Smith can return to work, or, alternatively, February 28, 2022, when it is  
20 anticipated a new Deputy Attorney General will start in the NDOC Division who can  
21 oversee and take over DAG Smith’s cases during his absence. On Thursday, February 3,  
22 2022, as part of reviewing DAG Smith’s current case load of forty-two (42) cases, Chief  
23 Deputy Attorney Gilmer became aware of the current motion, and immediately contacted  
24 Plaintiff’s counsel to hold a meet and confer regarding this deadline. Based on Plaintiff’s  
25 motion and Defendants’ views as to safety and security issues, the Parties understand that  
26 an order of this Court will be necessary to resolve the disagreement among the parties.

27 Consequently, the Parties agree to submit this Stipulation and Order for Defendants  
28 to provide this Court with their opposition to Plaintiff’s Motion.

1           **III. LEGAL STANDARD**

2           Federal Rule of Civil Procedure 6(b)(1)<sup>1</sup> provides:

3           (1) In General. When an act may or must be done within a  
4           specified time, the court may, for good cause, extend the time:

5               (A) with or without motion or notice if the court acts, or if  
6           a request is made, before the original time or its extension  
7           expires; or

8               (B) on motion made after the time has expired if the party  
9           failed to act because of excusable neglect.

10           Fed.R.Civ.P. 6(b)(1).

11           The United States Supreme Court has recognized, “Rule 6(b) gives the  
12           court *extensive flexibility* to modify the fixed time periods found throughout the rules,  
13           whether the enlargement is sought before or after the actual termination of the allotted  
14           time.” *Lujan v. Nat'l Wildlife Fed.*, 497 U.S. 871, 906 n. 7 (1990) (internal quotation marks  
15           and citation omitted) (emphasis added); *see also Perez-Denison v. Kaiser Found. Health  
16           Plan of the Nw.*, 868 F. Supp. 2d 1065, 1079 (D. Or. 2012) (citing and quoting *Lujan*, 497  
17           U.S. at 906). Further, this rule, like all the Federal Rules of Civil Procedure is to be liberally  
18           construed to effectuate the general purpose of seeing that cases (and other disputed issues)  
19           are decided on the merits. *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1258 (9th Cir.  
20           2010). Regarding “Good cause,” it is a non-rigorous standard that has been construed  
21           broadly across procedural and statutory contexts. *Id.* (citing several circuits *Venegas–  
Hernandez v. Sonolux Records*, 370 F.3d 183, 187 (1st Cir.2004); *Thomas v. Brennan*, 961  
22           F.2d 612, 619 (7th Cir.1992); *Lolatchy v. Arthur Murray, Inc.*, 816 F.2d 951, 954 (4th  
23           Cir.1987)).

24           Consequently, requests for extensions of time made before the applicable deadline  
25           has passed should “normally ... be granted in the absence of bad faith on the part of the  
26           party seeking relief or prejudice to the adverse party.” *Ahanchian*, 624 F.3d at 1259

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27           <sup>1</sup> LR IA 6-1(a): “A motion or stipulation to extend time must state the reasons for the  
28           extension requested and must inform the court of all previous extensions of the subject  
         deadline the court granted.” Further, a “stipulation or motion seeking to extend the time  
         to file an opposition or reply to a motion, or to extend the time fixed for hearing a motion,  
         must state in its opening paragraph the filing date of the subject motion or the date of the  
         subject hearing.” LR IA 6-1(c).

1 (quoting 4B Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* §  
2 1165 (3d ed. 2004)).

3 **IV. LEGAL ARGUMENT**

4 Due to unforeseen circumstances Counsel Smith, is on FMLA and is unable to  
5 respond to Plaintiff's Motion. Given various other deadlines, hearings and meetings,  
6 Counsel Gilmer does not reasonably believe that he or other counsel within the Office of  
7 the Attorney General (OAG) can adequately provide this Court with all necessary  
8 information for the Court to reach an informed decision on Plaintiff's Motion by the current  
9 deadline of today, February 4, 2022. The OAG is working diligently to provide a full and  
10 complete response to Plaintiff's Motion, but in order to do so, the Parties respectfully request  
11 this Court provide the OAG with an additional one (1) week to provide the response. As  
12 indicated, Plaintiff's counsel has agreed to this request on a meet and confer held on  
13 February 3, 2022.

14 In light of the above, a brief extension is necessary for Defendants and the OAG to  
15 gather necessary evidence to provide this Court with the appropriate facts required to  
16 properly consider Plaintiff's Motion. Defendants intend to file declaration(s) explaining in  
17 detail the safety and security risks that are presented by Plaintiff's Motion. Therefore,  
18 while understanding Plaintiff does not agree with Defendants' position as it pertains to  
19 safety and security risks, Defendants respectfully request that this Court provide them  
20 with sufficient time to make the Court aware of their concerns before ruling on Plaintiff's  
21 Motion.

22 The United States Supreme Court and the Ninth Circuit have indicated that good  
23 cause should normally be found when a motion to extend is timely filed. *Lujan*, 497 U.S. at  
24 906 n. 7; *Ahanchian*, 624 F.3d at 1253. Indeed, that good cause should be liberally found is  
25 well established throughout the Circuits. See *Venegas-Hernandez*, 370 F.3d at 187;  
26 *Brennan*, 961 F.2d at 619; *Arthur Murray*, 816 F.2d at 954. Synthesizing the precedent to  
27 liberally find good cause, a leading treatise similarly suggests that district courts should  
28 normally grant extension requests, made before the deadline, in the absence of bad faith

1 by the requesting party or prejudice to another party. 4B Charles Alan Wright, Arthur R.  
2 Miller & Adam N. Steinman, *Federal Practice and Procedure* § 1165, at 605–08 (2015).

3 In 2010, the Ninth Circuit gave a non-exhaustive list of valid good-cause reasons.  
4 *See Ahanchia*, 624 F.3d 1253. The Ninth Circuit noted reasons such as: holidays, weekends,  
5 prior commitments, previously planned trips, other occupational duties, personal and  
6 familial obligations, and the health of legal professionals. *Id.* at 1258-60.

7 Here, the Defendants deadline to respond to Plaintiff's Motion is February 4, 2022.  
8 But Counsel Smith was forced to take FMLA due to personal and familial obligations,  
9 which did not allow him to file a response by February 4th. As a result, Counsel Gilmer  
10 reached out to Plaintiff's counsel at the first available opportunity in an effort to discuss  
11 this deadline. Counsel Gilmer respectfully requested a professional courtesy of one week to  
12 ensure he or other counsel in the OAG would be able to effectively provide this Court with  
13 an opposition to Plaintiff's Motion. Understanding the circumstances, Plaintiff's counsel  
14 agreed to that request. The OAG and Defendants appreciate and thank Plaintiff's counsel  
15 for agreeing to the one-week extension Defendants seek from this Court.

16 The Parties agree that this extension is not brought in bad faith and will not  
17 prejudice the Plaintiff. Further, the Parties agree that the extension will allow Defendants  
18 the appropriate time to file a response, which will allow this Court to effectuate the general  
19 purpose of the Federal Rules of Civil Procedure, which is to ensure cases and other disputed  
20 issues are tried on the merits.

#### 21 IV. CONCLUSION

22 Pursuant to Fed. R. Civ. P. 6(b), the parties submit this extension of time to respond  
23 to Plaintiff's Motion before expiration of the February 4, 2022 deadline. Additionally, the  
24 Parties agree that this extension is not submitted in bad faith and that Plaintiff will not be  
25 prejudiced by the **new February 11, 2022 deadline**. Further, the Parties agree that good  
26 cause exists for this Court to grant the Parties extension request. This extension is being  
27 sought due to Counsel Smith's FMLA leave, Counsel Gilmer's prior commitments and  
28 occupational duties, and the significant safety and security concerns that this Court must

1 address to properly rule on the merits of Plaintiff's Motion. Moreover, the Parties submit  
2 this request after their meet and confer.

3 Therefore, good cause exists for an extension of time to respond to Plaintiff's Motion.

4 **Accordingly, IT IS HEREBY STIPULATED BY AND BETWEEN THE**  
5 **PARTIES** that the deadline to respond to Plaintiff's Motion for Meaningful Access to Mr.  
6 Welch [ECF No. 107] be continued to **Friday, February 11, 2022**.

7 DATED February 4, 2022.

8 FEDERAL PUBLIC DEFENDER

10 /s/ Randolph Fiedler  
11 Rene L. Valladares, Bar No. 11479  
12 Randolph Fiedler, Bar No. 12577  
13 Stacy Newman, Bar No. 14245  
14 *Attorneys for Plaintiff*

DATED February 4, 2022.

AARON D. FORD  
Attorney General

10 /s/ D. Randall Gilmer, on behalf of  
11 Alexander J. Smith, Bar No. 15484  
12 Deputy Attorney General  
13 D. Randall Gilmer, Bar No. 14001  
14 Chief Deputy Attorney General  
15 *Attorneys for Defendants*

## 15 ORDER

16 The Court, having reviewed the preceding Stipulation and Good Cause Appearing  
17 therefore, **HEREBY ORDERS** that the deadline to respond to Plaintiff's Motion for  
18 Meaningful Access to Mr. Welch [ECF No. 107] be continued to **Friday, February 11,**  
19 **2022.**

20 **IT IS SO ORDERED.**

21  
22 DATED this 4<sup>th</sup> day of February, 2022.

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24   
25 UNITED STATES MAGISTRATE JUDGE